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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,085	05/18/2004	Garry Tsaor		5652
29745	7590	04/14/2006		
JOE NIEH 18760 E. AMAR ROAD #204 WALNUT, CA 91789			EXAMINER SIPOS, JOHN	
			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/849,085

Applicant(s)

TSAUR, GARRY

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

**Claim 1** is rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of the Admitted Prior Art. The patent to Seifert shows the forming of a fluid dispenser comprising heat-sealing one end of the tube 14, filling the tube, sealing the other end of the tube 17 and affixing an applicator 32 at one end of the tube (column 2, line 62 et seq.).

As was stated in previous Office actions, the use of fixtures to hold a plurality of containers is well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, the use of such a fixture is considered as an admission of prior art. It would have been obvious to one skilled in the art to use tube-holding fixture of the Admitted Prior Art in the process of Seifert to allow the holding of a container while freeing the hand of the operator and to handle more than one container.

**Claim 2** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of Bainbridge (1,641,408). The patent to Seifert lacks the use of score line but does disclose the use different container materials as weakening means to ease the opening of the container (see column 3, line 58 et seq.). The patent to Bainbridge shows the use of score line 3 in a small container that permits the user to easily open the container. It would have been obvious to one skilled in the art to substitute the score line opening means of Bainbridge for the opening means of Seifert in order to simplify the opening mechanism and not require different materials for different parts of the container.

**Claims 3-7** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348) in view of Baibridge (1,641,408) and further in view of the Admitted Prior Art.

As was stated in the previous Office actions, the removal of excess liquid from a container (claims 3 and 5), the use of more than one substance in a single container (claim 4-7) and the centrifuge of a container (claims 6 and 7) are well known and common knowledge in the packaging art and in view of these assertions and Applicants silence regarding them, these are considered as an admission of prior art. It would have been obvious to one skilled in the art to remove excess liquid in the tubes of Seifert to allow the forming of a better seal; to use of more than one substance in the process of Seifert to allow the packaging of mixable products; and to centrifuge the tubes of Seifert to mix the contents as taught by the Admitted Prior Art.

**Claims 8-11** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Seifert (5,035,348).

The removal of excess liquid from a container (claims 3 and 5), more than one substance in a single container (claim 4-7) and the centrifuge of a container (claims 6 and 7) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of the Seifert operation would have been obvious to one skilled in the art for the known benefits of each modification. For example, removing excess liquid allows the forming of a better seal at the container end; the use of more than one substance permits the packaging of mixable products; and centrifuge of the container permits the mixing of the container.

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### ***RESPONSE TO APPLICANT'S ARGUMENTS***

Applicant's arguments have been considered but are not persuasive. Applicant argues that the tube of the instant invention is sealed only at one end of the tube while the other end, where the applicator is applied, remains open in the final package. Further it is argued that since Seifert's tube and method requires the sealing at both ends of the tube, the reference teaches away from the instant invention. The position of the examiner is that the process set forth in the claims does not require the sealing of only one end of the tube while leaving the other end open. Claim 1 merely sets forth the "sealing only one end of the tube" before the filling operation; however, the claim makes no mention of the state of the other end of the tube either during the process or in the final package. As was stated in the last action, the claim sets forth a process in terms of "comprising the steps of", i.e. steps other than sealing only one end of the tube prior to the filling operation may take place including sealing the other end after the filling operation. Seifert teaches the sealing of only one end of the tube before the filling operation and the claims therefore read on the Seifert disclosure since it does disclose all the claimed process steps.

It should also be noted that leaving the applicator end of a tube in the final package unsealed is well known in this art. Note that the cited patent to Foster (3,661,666) shows various embodiments of swab applicators wherein the tube between the cotton applicator 14/104 and the product 25/114 is not sealed.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

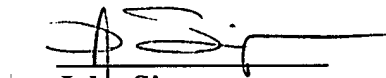
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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(571) 273-8300**.

  
**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**

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